2015 IL App (5th) 120494-U

NO. 5-12-0494

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Massac County.
	)	
v.	)	Nos. 08-CF-67 & 09-CF-28
	)	
MONTY ENGLEHART,	)	Honorable
	)	Joseph M. Leberman,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Justices Stewart and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's determination that the defendant was unfit to stand trial was not against the manifest weight of the evidence.

¶ 2 FACTS

¶ 3 In May 2008, in No. 08-CF-67, the State filed an information charging the defendant, Monty Englehart, with unlawful failure to comply with the notification requirements of the Sex Offender Registration Act (730 ILCS 150/1 *et seq*. (West 2008)). In March 2009, in No. 09-CF-28, the defendant was indicted on one count of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2008)), one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2008)), and four

counts of possession of child pornography (720 ILCS 5/11-20.1(a)(6) (West 2008)). In both cases, warrants were issued for the defendant's arrest. In February 2011, after he was apprehended in Wyoming, the defendant was extradited to Massac County and made his first appearance.

¶ 4 By January 2012, four attorneys who had successively been appointed to represent the defendant had been allowed to withdraw. The first of the four cited a conflict of interest, the second cited religious reasons, and the third and fourth indicated irreparable problems with the attorney-client relationship. In July 2012, the defendant's fifth appointed attorney, Cord Wittig, filed a motion for leave to withdraw, complaining, among other things, that the defendant had been "verbally and mentally abusive to counsel" and had "made physical contact of an aggressive and intimidating manner with counsel." The trial court subsequently entered an order acknowledging Wittig's complaints but denying his request that he be allowed to withdraw. The trial court noted that Wittig had previously indicated that he was ready for trial and that given the defendant's past problems with his appointed attorneys, "a new attorney could face the same attitude and lack of cooperation from [the] defendant." Hoping to "mitigate the personal differences between Attorney Wittig and the defendant," however, the trial court appointed Patrick Duffy to act as "associate counsel" and to "assist at trial in a 'second[-]chair' capacity."

¶ 5 In August 2012, Wittig and Duffy filed a motion for a fitness examination alleging their belief that there was a *bona fide* doubt as to the defendant's fitness to stand trial. See 725 ILCS 5/104-11(a) (West 2012). The motion referenced the defendant's past

problems with his appointed attorneys and noted that a presentence investigation report filed in Massac County case number 97-CF-59 indicated that the defendant had a long history of mental illness and counseling and had previously been diagnosed with behavioral and personality disorders. The motion thus requested that the trial court appoint a qualified expert to examine the defendant's fitness to stand trial. See 725 ILCS 5/104-11(b) (West 2012).

¶ 6 At a subsequent hearing on the defense's motion for a fitness examination, the trial court was advised that while the defendant was "adamantly opposed to the motion," there was no objection by the State. The court then stated that although it had not personally observed anything indicating that the defendant might be unfit, because his attorneys believed that there was a *bona fide* doubt as to his fitness and had made "some showing" that such might be the case, it was "incumbent on" the court to grant the defense's motion. Accordingly, the court entered an order directing that the defendant be examined by Dr. William Donaldson for the purpose of determining the defendant's fitness to stand trial (see 725 ILCS 5/104-13 (West 2012)) and that Donaldson timely prepare a written report of his findings (see 725 ILCS 5/104-15 (West 2012)).

¶ 7 In September 2012, Donaldson examined the defendant and submitted his written report. In October 2012, the cause proceeded to a fitness hearing (see 725 ILCS 5/104-16 (West 2012)), where Donaldson was the sole witness. We note that during the hearing, the defendant repeatedly interrupted the proceedings to accuse Donaldson of lying, and at one point, the trial court had to order the defendant to "sit down."

¶ 8 Donaldson testified that he was a licensed clinical psychologist and had performed hundreds of fitness examinations over the years. Donaldson explained that when he had attempted to interview the defendant, the defendant had been uncooperative and "began yelling, screaming, [and] cursing that he was not going to participate." Donaldson indicated that after the defendant had told him to leave, he had spoken with a supervisor at the jail to obtain additional information about the defendant. The supervisor told Donaldson that none of the other inmates wanted to be housed with the defendant and that they "would go to extremes to get out of the cell" if made to do so. Donaldson also learned that the defendant had accused a dentist of incompetence and of "trying to cover up" the incompetence following a tooth-extraction procedure; had "fired" several attorneys; had refused food that he thought had been poisoned; had claimed that paint fumes in the jail were poisoning him and causing him to bite his tongue; was refusing to take his hypertension medication; and "self isolates in his cell" with the lights off most of the day, "rendering his cell dark."

¶ 9 Donaldson testified that he believed that the defendant was exhibiting "behavioral symptoms of a mental illness" and was not fit to stand trial. Donaldson explained that due to the defendant's lack of cooperation, however, there was not "sufficient clinical information to give a formal diagnosis, such as schizophrenia." Donaldson indicated that when evaluating a cooperative defendant's fitness, psychometric testing is used to "validate a mental illness" or otherwise determine "whether or not somebody is faking a mental illness to avoid prosecution." Here, however, Donaldson had to base his evaluation solely on what he had seen and learned. Donaldson indicated that the

defendant's behavior suggested paranoia but could also be viewed as "planned." Donaldson testified that although the defendant apparently understood the nature of the proceedings against him, he may suffer from delusional beliefs or disorganized thought processes that would hinder his ability to assist in his defense.

¶ 10 On cross-examination, Donaldson testified that although the defendant is "very intelligent," "very manipulative," and might have been "faking" some of his behaviors, he could "still have mental illness and/or psychosis." Donaldson testified that without sufficient information to make a more informed opinion, he would rather "make an error on the side of caution." Donaldson further indicated that "rational people" who do not believe that they are mentally ill are generally "willing to take a test to prove that they're in good shape."

¶ 11 At the conclusion of Donaldson's testimony, stating that it had "heard nothing that contradict[ed] Dr. Donaldson's opinion that the [d]efendant [was] unfit to stand trial," the trial court found the defendant unfit. The court also noted that Donaldson's report indicated that the defendant would likely be able to attain fitness within one year. The trial court accordingly ordered that the defendant be placed for treatment in the custody of the Department of Human Services (DHS) and set the cause for a 90-day hearing. See 725 ILCS 5/104-16(d), 104-17(b), 104-20 (West 2012). The defendant subsequently filed a timely notice of appeal from the trial court's order finding that he was unfit. See 725 ILCS 5/104-16(e) (West 2012).

¶ 12 DISCUSSION

¶ 13 The defendant argues that we should reverse the trial court's order finding him unfit to stand trial because it was not sufficiently supported by the evidence presented for the court's consideration. We disagree.

¶ 14 "In Illinois, a defendant is presumed fit to stand trial and will be considered unfit only if, because of the defendant's mental or physical condition, the defendant is unable to understand the nature and purpose of the proceedings against him or her or to assist in his or her defense." *People v. Damico*, 309 Ill. App. 3d 203, 209 (1999).

¶ 15 "Because of the fundamental constitutional nature of the fitness requirement, once facts are brought to the attention of the trial court, either from observation of the defendant or the suggestion of counsel, that raise a *bona fide* doubt of the defendant's fitness to stand trial, the trial court has a duty to hold a fitness hearing." *Id.*

¶ 16 "In determining fitness, the trial court is not required to accept the opinions of psychiatrists." *People v. Lucas*, 388 Ill. App. 3d 721, 728 (2009). "The trial court should assess the credibility and weight of expert testimony and independently analyze and evaluate the factual basis for the expert's opinion rather than rely on the ultimate opinion itself." *Id.* "However, while it is within the province of the trial court to reject or give little weight to certain testimony, even expert testimony, this power is not an unbridled one." *Id.* "A trial court cannot reject an expert's opinion that a defendant is unfit without evidence that the defendant is fit." *Id.*; see also *People v. Jones*, 386 Ill. App. 3d 665, 671 (2008) ("[A] trial court cannot reject an expert's opinion that a defendant is unfit

without testimony or evidence that defendant was fit, other than [the] defendant's own statement.").

¶ 17 A trial court's finding that a defendant is unfit to stand trial will not be reversed unless it is against the manifest weight of the evidence. *People v. Burton,* 184 Ill. 2d 1, 13 (1998). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon,* 227 Ill. 2d 322, 332 (2008).

¶ 18 On appeal, the defendant suggests that he was deemed unfit solely because he was uncooperative with Donaldson and appointed counsel. The defendant ignores the evidence regarding his behavior in jail, however, which Donaldson identified as evidence that the defendant was exhibiting symptoms of psychosis. The defendant also complains that Donaldson's conclusions regarding the presence of mental illness were too speculative and uncertain to support a finding of unfitness. Donaldson explained, however, that the defendant's refusal to cooperate with the fitness examination precluded a more definitive diagnosis and made it more difficult to determine whether the defendant was malingering. He nevertheless concluded that based on all that he had seen and learned, a finding of unfitness was warranted. Donaldson indicated that the defendant may suffer from delusional beliefs or disorganized thought processes that would hinder his ability to assist in his defense and that there was "just too much stuff going on" for him not to err on the side of caution. We also note that Donaldson's report advised that his opinion was "stated to a degree of reasonable psychological certainty," and we

recognize that "[h]uman psychology is an inexact science" (*People v. Fabing*, 143 Ill. 2d 48, 56 (1991)).

¶ 19 In any event, at the fitness hearing and in his report, Donaldson opined that the defendant was unfit to stand trial, and no evidence to the contrary was ever offered or presented. Under the circumstances, the trial court's finding of unfitness was not against the manifest weight of the evidence, and we accordingly affirm its judgment. See *Lucas*, 388 Ill. App. 3d at 728; *Jones*, 386 Ill. App. 3d at 671.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, the trial court's judgment is hereby affirmed.

¶ 22 Affirmed.